IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 385 of 2004

Date of Decision: 15th May, 2007.

Municipal Council, Mandi. …**Petitioner.**

Versus

Abdul Hamid and another. …**Respondents.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting?[2] Yes.

For the Petitioner: **Mr. Shrawan Dogra, Advocate.**

For the respondents: **Mr. Neeraj Gupta, Advocate, for respondent No.1.**

V.K. Gupta, C.J. (Oral)

The petitioner had instituted proceedings against respondent No.1 before the Collector, Mandi in case No.4/99 in terms of Sections 4 and 5 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (1971 Act for short) for the eviction of respondent No.1 from the premises in question. Vide an order passed on 29th September, 2001, the Collector ordered the eviction of respondent No.1. Feeling aggrieved, respondent No.1 filed an appeal under Section 9 of the 1971 Act before the Commissioner, Mandi Division, Mandi

---

[2] Whether the reporters of Local Papers may be allowed to see the judgment?

who vide the impugned order dated 16th April, 2004 referred the parties to arbitration.

Mr. Neeraj Gupta, learned counsel appearing for respondent No.1 has submitted that this respondent at the very threshold of the proceedings, at the very outset had submitted a written application dated 23rd April, 1999 to the Collector specifically requesting and praying therein to refer the parties to arbitration in view of the fact that Clause No.12 of the agreement between the parties provided for adjudication of disputes between the parties through arbitration. He has shown me a copy of this document which even though purports to be the "reply" of this respondent to the notice issued under Section 4 of 1971 Act yet it does clearly say in its concluding part that this is the "preliminary objection" contained in the said "reply" with respect to the adjudication of the disputes through arbitration and that this issue/request may be decided first before calling upon the respondent to file the reply on merits. Mr. Dogra does not dispute or controvert this factual assertion of Mr. Neeraj Gupta.

The aforesaid written request of respondent No.1 was squarely covered by Section 8 of the Arbitration and Conciliation Act, 1996 (1996

Act for short). Despite such written request having been received by the Collector not only did the Collector proceed to exercise his jurisdiction under 1971 Act and went on to pass the final eviction order against respondent No.1, he even did not bother to mention about this specific request of respondent No.1 in the course of the order dated 29th September, 2001 passed by him. First and foremost, it was his statutory duty under Section 8 of 1996 Act to have taken cognizance of the aforesaid request of respondent No.1 made and contained in his reply dated 23rd April, 1999 and secondly it was his obligation and duty as a public servant to have at least mentioned about this request (having been made) in the course of his order dated 29th September, 2001. He did neither.

The legal prescription contained in Section 8 of 1996 Act is very clear. Also, it is mandatory and binding. It clearly lays down that if a written request is made by a party in proceedings before a judicial authority, the judicial authority has no discretion but to refer the parties to arbitration, subject to the observance of stipulations contained in Section 8 itself. In the present case, all the stipulations contained in Section 8 having been complied with, and the request in writing having been made by

respondent No.1, it was the statutory obligation on the part of the Collector to have immediately taken himself off from the task of conducting the proceedings under 1971 Act and to have referred the parties to arbitration under 1996 Act. By not doing so and by continuing with the proceedings under 1971 Act which ultimately culminated in the passing of the eviction order, the Collector committed an illegality. The eviction order therefore, stood vitiated as being illegal on this ground alone.

Apart from the fact that in view of Section 8 of 1996 Act, the Collector had no jurisdiction to continue with the proceedings under the 1971 Act and, therefore, he wrongly exercised his jurisdiction, the Collector also mis-conducted himself as a public servant in not taking note of the aforesaid request of respondent No.1 and in omitting to make a mention thereof in the course of the order dated 29th September, 2001. A case, therefore, is prima facie made out for proceeding against the Collector on the administrative side by the State Government.

The Commissioner in the course of the impugned order dated 16th April, 2004 by noticing the aforesaid submission of respondent No.1 in para 3 of the said order has correctly set aside the

Collector's order and referred the parties to arbitration.

No interference is called for. The petition is dismissed.

Because undoubtedly the existence of the arbitration agreement between the parties did enjoin that the disputes between the parties should be adjudicated upon through arbitration, the named Arbitrator, Deputy Commissioner, Mandi, should accordingly exercise his jurisdiction as an Arbitrator by adjudicating upon the disputes between the parties. The petitioner herein is permitted to initiate the arbitration proceedings against respondent No.1 by making a Reference to the named Arbitrator. The Arbitrator is directed to enter upon the Reference immediately and by following the procedure prescribed under law conduct the arbitral proceedings and pass the arbitral award without any delay.

As far as the mis-conduct attributed to the Collector is concerned, I direct the Government of Himachal Pradesh through the concerned Head of the Administrative Department to initiate disciplinary proceedings against the then Collector and take them to logical conclusion. A copy of this order accordingly shall be sent to the Chief

Secretary, Government of Himachal Pradesh for compliance and appropriate action.

The petition is dismissed.

15th May, 2007. **(V.K. Gupta), C.J.**

(tr)